

Recent Copyright Developments in Europe

David Vaver*

My talk is in three parts. First, I provide some background for recent developments in European copyright law, including related and *sui generis* rights.¹ Second, I sketch some of those developments, namely:

- the Database Directive (1996),
- the proposed Copyright Harmonization Directive (1997),
- the proposed E-commerce Directive (1998), and
- proposed greater access to governmental information.

Finally, I make some observations about harmonization.

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Background

The commodification of information is alive and thriving in Europe. General EU policy is to help local information providers and packagers to compete adequately with their foreign counterparts, particularly those based in the US. Copyright is a central policy instrument for this purpose.

As the US began developing its National Information Infrastructure policy in the early 1990s, Europe began planning for something even bigger, the "Information Society." In 1994, the European Council was told by a "High-Level Group" that Europe had to become an Information Society, and fast; else it would be Apocalypse Now:

The first countries to enter the information society will reap the greatest rewards. .. By contrast, countries which temporise, or favour half-hearted

* Reuters Professor of Intellectual Property & Information Technology Law, University of Oxford; Director, Oxford Intellectual Property Research Centre, St Peter's College; Professorial Fellow, St Peter's College, Oxford.

¹"Copyright" is used throughout in this extended sense.

solutions, could, in less than a decade, face disastrous declines in investment and a squeeze on jobs.²

According to this Report (the "Bangemann Report"), individual European states were getting, or would get, up to speed, but Eurocrats had to ensure that Europe got there all together as a single unit. The benefits of this policy would flow through all of European society. Those benefits would, according to the Report, be the following:

Europe's citizens and consumers:

A more caring European society with a significantly higher quality of life and a wider choice of services and entertainment.

the content creators:

New ways to exercise their creativity as the information society calls into being new products and services.

Europe's regions:

New opportunities to express their cultural traditions and identities and, for those standing on the geographical periphery of the Union, a minimising of distance and remoteness.

governments and administrations:

More efficient, transparent and responsive public services, closer to the citizen and at lower cost.

European business and small and medium sized enterprises:

More effective management and organisation, access to training and other services, data links with customers and suppliers generating greater competitiveness.

Europe's telecommunications operators:

The capacity to supply an ever wider range of new high value-added services.

the equipment and software suppliers; the computer and consumer electronics

²Europe and the global information society: Recommendations to the European Council (26 May 1994), chaired by Martin Bangemann (and including one Romano Prodi) .

industries:

New and strongly-growing markets for their products at home and abroad.³

No supporting data accompanied these predictions. After all, the High-Level Group was providing Vision, and Vision needs only clear (perhaps appropriately tinted) spectacles, not numbers nor charts. The drive to, and arrival at, this Eurotopia would produce only winners, unless one lacked the wisdom or foresight to join in the race.

Intellectual property was central to the Vision for the Information Society:

In this global information market place, common rules must be agreed and enforced by everyone. Europe has a vested interest in ensuring that protection of IPRs receives full attention and that a high level of protection is maintained.⁴

In advocating that what was good IPR-wise for Europe was also good for everyone else, the Bangemann Report's vision nonetheless got a little cloudy. One could equally have argued that a different strategy would benefit Europe more: e.g., ensuring that everyone else had worse intellectual property laws than Europe. Europe might be better off if others did not harmonize: the non-harmonizers would then become the temporizers that the Report predicted would face "disastrous declines in investment and a squeeze on jobs." Presumably, the investments and jobs would flee for the richer IP climes of Europe.

Grand Visions, however, look and sound better if they are untrammelled by requirements of consistency. The general policy that has therefore developed is that EU law should become world law. Unsurprisingly, the EU has worked with WIPO to make WIPO's copyright agenda reflect that of the EU.

European policy in copyright matters has involved the adoption and promotion of two Universal Truths:

- (1) If copyright is good – and the weight of history and of lobby group numbers says that it is – then more copyright is even better.
- (2) Those in Europe who are sceptical or agnostic about Truth #1 are potential menaces to the common weal (or common market) and so must be "harmonized" into

³*Ibid.*, ch. 1 ("The information society - new ways of living and working together").

⁴*Ibid.*, ch. 3 ("Completing the agenda").